

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF OREGON

3
4 UNITED STATES of AMERICA,)
)
5 Plaintiff,) No. CR-04-243-KI
)
6 vs.) December 20, 2010
)
7 STEVEN GABRIEL MOOS,) Change of Plea
)
8 Defendant.) Portland, Oregon
)
-----)

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10 TRANSCRIPT OF PROCEEDINGS

11 BEFORE THE HONORABLE GARR KING, DISTRICT COURT

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15 APPEARANCES:

16 FOR THE PLAINTIFF: MICHELLE KERIN
United States Attorney's Office
17 1000 SW 3rd, 7th Floor
Portland, OR 97209

18 FOR THE DEFENDANT: STEPHEN R. SADY
Federal Public Defender's Off.
19 101 SW Main St., Suite 1700
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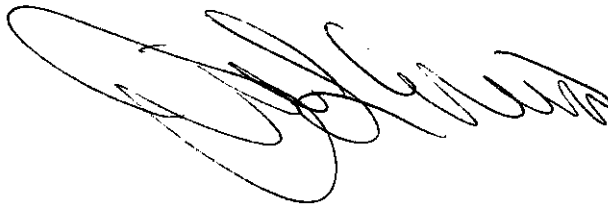
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P-R-O-C-E-E-D-I-N-G-S

THE CLERK: All rise. This is the United States District Court, Judge King presiding, Case No. CR-04-243-HA, United States versus Moos.

MR. SADY: Good afternoon, Your Honor.

MS. KERIN: Good afternoon, Your Honor. We're here in United States versus Steven Gabriel Moos, Case No. CR-04-243. Mr. Moos is present in the courtroom. He's in custody and represented by Steve Sady of the Federal Public Defender's office. Michelle Kerin and Allan Garten for the government. This is the time for defendant's change of plea and detention hearing.

The government is ready to proceed.

THE COURT: Thank you, Ms. Kerin.

Mr. Sady, good afternoon.

MR. SADY: Good afternoon, Your Honor. Through the courtesy of the clerk, we've provided the Court with a petition and attached plea agreement that have both been signed by myself and defendant in the case. We're ready to proceed with the change of plea.

THE COURT: All right. Which count is involved?

MR. SADY: Count 3, Your Honor.

THE COURT: Okay. Is it "Moss" or "Moos" --

1 MR. SADY: "Moss," Your Honor.

2 THE COURT: Mr. Moos, would you stand,
3 please, and be sworn?

4 (Defendant sworn in.)

5 THE COURT: Mr. Moos, you've taken an oath to
6 tell the truth. I'll be asking you a number of
7 questions this afternoon, and you must give me truthful
8 answers to those questions. Do you understand that?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: And have you taken any medicine
11 or drugs recently, anything that would make it hard for
12 you to understand what's happening in court today?

13 THE DEFENDANT: No, I haven't.

14 THE COURT: Okay. If you don't understand
15 anything that's happening, if you have any questions at
16 any time, please tell me or tell your lawyer. Will you
17 do that?

18 THE DEFENDANT: Yes, I will.

19 THE COURT: Have you gone over the indictment
20 with your lawyer and discussed with him the charges
21 against you?

22 THE DEFENDANT: Yes. Thoroughly.

23 THE COURT: And have you had an opportunity
24 to ask your lawyer all the questions you have about
25 these charges?

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1 THE DEFENDANT: Yes, I have.

2 THE COURT: Do you feel you understand both
3 the nature and the seriousness of the charges?

4 THE DEFENDANT:: I do.

5 THE COURT: Are you satisfied with the help
6 and advice that Mr. Sady has given you as your lawyer
7 in this matter?

8 THE DEFENDANT: Yes, I am.

9 THE COURT: Now, I've received today a copy
10 of a petition to enter a plea of guilty, and it appears
11 that you've signed that petition, and it was signed
12 today, the 20th of December. Is that your signature on
13 the petition?

14 THE DEFENDANT: Yes. I just signed it.

15 THE COURT: Attached to that is a plea
16 agreement dated December 19th of this year, and it
17 appears that you signed that on the 20th, as well. Is
18 that your signature on that?

19 THE DEFENDANT: Yes. Yes.

20 THE COURT: All right. At this point I'm
21 going to ask Ms. Kerin to summarize the terms of the
22 plea agreement. I'd like you to listen carefully, as
23 I'll have some questions for you when she finishes.

24 And you may be seated while she does that.

25 Ms. Kerin?

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1 MS. KERIN: Yes. Thank you, Your Honor.

2 The plea agreement between the government and
3 the defendant in provision one, the agreement indicates
4 that it is an agreement only between the United States
5 Attorney's Office, the defendant, and no other state or
6 federal or local jurisdiction.

7 Provision two indicates that the defendant
8 has agreed to plead guilty to Count 3 of the
9 indictment, which charges the crime of false statements
10 to a government agency in violation of 18 USC 1001.

11 In addition, provision two indicates that the
12 United States Attorney's Office will recommend to
13 Washington County District Attorney's Office, who also
14 has pending charges against Mr. Moos, to permit the
15 defendant to plead guilty to a misdemeanor charge. The
16 provision two acknowledges that the US Attorney's
17 Office's recommendation is only that, a recommendation,
18 and has no binding authority upon the Washington County
19 District Attorney's Office.

20 In addition, the parties have agreed that
21 following the defendant's entry of plea, the United
22 States Attorney's Office will not contest the release
23 of Mr. Moos pending his sentencing. And, in addition,
24 the United States Attorney's Office will recommend to
25 the Washington County District Attorney's Office that

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1 it lift its current detainer and permit Mr. Moos to be
2 released pending sentencing in that matter, as well.

3 Subsection 4 of the agreement advises
4 Mr. Moos of the maximum penalties under 18 USC Section
5 1001 which are five years imprisonment, a fine of
6 \$250,000, and three years of supervised release, as
7 well as a hundred-dollar fee assessment. In Subsection
8 4 of the agreement, the defendant agrees to pay the
9 hundred-dollar fee assessment by the time of entry of
10 guilty plea or explain to the Court why he can't.

11 Subsection 5 is an agreement that after the
12 defendant is sentenced, this -- the US Attorney's
13 Office, the government, will move to dismiss the
14 remaining counts, which are Counts 1, 2, and 4 and
15 agrees not to bring additional charges arising out of
16 the investigation that led to the indictment in this
17 matter known to the US Attorney's Office at this time.

18 Subsection 6 advises the defendant that the
19 Court must determine the applicable advisory guideline
20 range under the sentencing guidelines.

21 Subsection 7 lays out what the parties agree
22 is the relevant conduct under the advisory sentencing
23 guidelines. And, specifically, that the base offense
24 level is six. The parties do not believe that other
25 offense levels are applicable.

1 Subsection 8 provides that the defendant must
2 demonstrate to the Court that he admits and accepts
3 responsibility under the applicable guideline range.
4 And that if he does so between now and the time of
5 sentencing, the US Attorney's Office will agree to a
6 two-level downward departure for such acceptance.

7 Subsection 9 indicates that at the time of
8 sentencing, so long as the defendant demonstrates the
9 acceptance of responsibility, the United States
10 Attorney's Office will recommend to this Court a
11 within-guideline sentence as its position at
12 sentencing.

13 Subsection 10 binds the US Attorney's Office
14 not to seek any additional upward departures,
15 adjustments, or variances to the advisory sentencing
16 guideline range.

17 Subsection 11 outlines the waiver of appeal
18 that the defendant has agreed to. Specifically, the
19 defendant knowingly and voluntarily agrees to waive his
20 right to appeal if -- unless the sentence imposed
21 exceeds the statutory maximum or the Court arrives at
22 an advisory guideline range by applying an upward
23 departure under the guidelines Chapters 4 or 5(K) or
24 that the Court exercises discretion under 18 USC
25 Section 3553 to impose a sentence which exceeds the

1 advisory guideline range.

2 In addition, the defendant waives his right
3 to file a collateral attack, including a motion under
4 28 USC Section 2255.

5 Subsection 12 advises the defendant that the
6 Court is not bound by the recommendations by the
7 parties and that it will make its own determination
8 under its responsibilities under 18 USC 3553(a).

9 Subsection 13 directs the US Attorney to
10 fully inform the presentence writer and the Court of
11 the facts under the law related to the defendant's
12 case.

13 Subsection 14 provides the penalties for
14 breach of the agreement between the US Attorney's
15 Office and defendant. Specifically, if the defendant
16 commits any offenses between signing this agreement and
17 sentencing or breaches any other terms, the United
18 States Attorney's Office is relieved of its obligations
19 under the agreement, but the defendant may not withdraw
20 his guilty plea.

21 Finally, Subsection 15 indicates that all of
22 the promises and the agreements between the parties are
23 memorialized in the agreement before the Court.

24 THE COURT: Okay. Ms. Kerin, have you made
25 any preliminary determination of the advisory guideline

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1 range in this case?

2 MS. KERIN: Yes, Your Honor. The advisory
3 guideline range is zero to six months.

4 THE COURT: All right. Thank you.

5 Mr. Moos, would you stand, please?

6 Mr. Moos, have you been able to discuss the
7 terms of the plea agreement with your lawyer and
8 discuss with him how they will affect you?

9 THE DEFENDANT: Yes, I have.

10 THE COURT: Do you feel you understand the
11 terms of the plea agreement?

12 THE DEFENDANT: Unfortunately, I do.

13 THE COURT: All right. Have any promises
14 been made to you regarding your sentence other than
15 what's set forth in that plea agreement?

16 THE DEFENDANT: No promises.

17 THE COURT: Has anyone threatened you
18 intimidated you in any way to get you to plead guilty
19 when you didn't really want to?

20 THE DEFENDANT: No.

21 THE COURT: Well, this is a felony offense.
22 Is that correct, Ms. Kerin?

23 MS. KERIN: Yes, Your Honor.

24 THE COURT: And after sentencing, a judgment
25 will be entered against you that may deprive you of

1 valuable civil rights, such as the right to vote, the
2 right to hold public office, the right to serve on a
3 jury, the right to possess any kind of firearm.

4 Are you aware of those facts?

5 THE DEFENDANT: Yes, I am.

6 THE COURT: The maximum sentence that could
7 be imposed upon you for the crime to which you are
8 pleading guilty is five years in prison and a fine of
9 up to \$250,000.

10 You understand that's the maximum sentence?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: You will have to pay a fee
13 assessment of \$100. Are you aware of that?

14 THE DEFENDANT: Yes, I am.

15 THE COURT: All right. Now, it's my
16 obligation to determine a just and reasonable sentence
17 for your case. I won't be able to make that
18 determination until after a presentence report is
19 prepared. That report is prepared by the probation
20 office. It gives me information about the offense
21 conduct. It gives me information about you and your
22 background.

23 Now, at the sentencing hearing I will
24 consider any objections to the presentence report. I
25 will make rulings. I will determine an advisory

1 guideline range based on the facts that are presented
2 to me.

3 Now, in determining the appropriate sentence
4 for your case I must consider the advisory guideline
5 range, I will consider the plea agreement between the
6 parties, and I will consider all other appropriate
7 factors that are set forth by the law.

8 Now, you and your lawyer may have discussed
9 possible sentences, but do you understand that the
10 sentence the Court imposes may be different from any
11 estimate that your attorney has given you?

12 THE DEFENDANT: I do understand.

13 Can I ask? Will you be sentencing me?

14 THE COURT: I'm sorry?

15 THE DEFENDANT: Will you be sentencing me?

16 THE COURT: I will be sentencing you unless
17 something happens to me.

18 THE DEFENDANT: Okay. All right.

19 THE COURT: Now, what is the reason for
20 asking that question?

21 MR. SADY: Your Honor, I indicated that there
22 was an uncertainty about whether Judge Haggerty,
23 because he had originally been assigned to the case,
24 would be continuing.

25 THE COURT: All right. That case has been

1 reassigned to me. Isn't that correct, Mary?

2 THE CLERK: Yes.

3 MR. SADY: Thank you, Your Honor.

4 THE COURT: All right. Now, if you're
5 sentenced to prison, you are not entitled to parole.
6 You'll have to the serve the full sentence, except for
7 any credit for good behavior that you've earned.

8 The maximum credit for good behavior is 47
9 days for each year of imprisonment served, but credit
10 for good behavior does not apply to a sentence of one
11 year or less.

12 Do you understand that?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: If you were sentenced to prison,
15 there would be a term of supervised release to follow
16 of up to three years. And during that time if you were
17 to violate any of the terms of your supervised release,
18 you could be sentenced to additional prison time.

19 Do you understand that?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Now, there is a pending charge in
22 Washington County. Mr. Sady, what's the status there?

23 THE DEFENDANT: Your Honor. Greg Scholl from
24 the Washington County Public Defender's Office is
25 representing him on that matter. There had been

1 recommendations made by the United States Attorney's
2 Office. We are -- there has been some new information
3 that we are concerned about, but we are satisfied that
4 the US Attorney's Office will do all it can to make
5 those recommendations heard in Washington County.

6 THE COURT: All right. Have you discussed
7 with your client that there's nothing I can do about
8 those state charges; that I do have discretion to
9 consider whether a federal sentence should be served
10 concurrently or consecutively with the state sentence,
11 but if he's sentenced on this federal charge before the
12 state sentence, I cannot make that concurrent?

13 Have you talked to him about that?

14 MR. SADY: Your Honor, I believe that the
15 anticipation would be that the -- that the federal
16 matter would go first. I think that's how the parties
17 are anticipating it. And that the -- it's been
18 articulated in the agreement as a nonbinding
19 recommendation. So it's understood that those matters
20 are different; that Mr. Scholl will be dealing directly
21 with Washington County.

22 The most immediate thing of interest is that
23 we have been -- that the United States Attorney's
24 Office is in touch regarding the release decision,
25 because obviously that makes a lot of difference to us.

1 We are hoping that they will either effectuate
2 withdrawal of the warrant or get him in court in
3 Washington County as quickly as possible for a release
4 there and then let that case take its course.

5 THE COURT: All right. That's fine. Thank
6 you.

7 Now, you have waived many of your appeal
8 rights in your plea agreement. I want to make sure you
9 understand that ordinarily you can appeal your
10 conviction if you believe the guilty plea was unlawful
11 or if there was some other fundamental defect in the
12 proceeding that you haven't waived by entering a guilty
13 plea.

14 You have a legal right to appeal your
15 sentence if you feel the sentence is contrary to law,
16 but you can give that right up as part of a plea
17 agreement. And in your plea agreement you have given
18 up most of your appeal and post-conviction relief
19 rights.

20 Have you discussed that with your lawyer?

21 THE DEFENDANT: I understand it, Your Honor.

22 THE COURT: Okay. Now, the plea agreement
23 does include certain recommendations to me and
24 agreements that have been made between your attorney
25 and the attorney for the government. I do carefully

1 consider these recommendations, but I'm not bound by
2 recommendations or agreements. If I rejected any
3 recommendations or agreements and if your sentence
4 turned out to be different than you may have
5 anticipated, you may not withdraw your plea. Do you
6 understand that?

7 THE DEFENDANT: I do.

8 THE COURT: I want to explain the rights you
9 have if you continued to plead not guilty and went to
10 trial on these charges against you. You have the right
11 to be presumed innocent. You have the right to a trial
12 by jury. The government must prove every element of
13 each charge against you beyond a reasonable doubt. You
14 have the right to the continued assistance of an
15 attorney, including representation at trial. You have
16 the right to see and hear witnesses and have them
17 cross-examined in your defense and the right to have
18 witnesses brought to court to testify for you.

19 You can't be forced to testify unless you
20 voluntarily choose to do so in your defense.

21 If you decided not to testify or not to put
22 on any other evidence in your defense, those facts
23 cannot be used against you.

24 Now, if you enter a guilty plea, there will
25 be no trial, and you will have given up these trial

1 rights I've just described.

2 Do you understand that?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: Okay. At this point I'm going to
5 ask Ms. Kerin to outline the nature of the charge
6 against you in Count 3, the essential elements that the
7 government would have to prove, and the evidence that
8 the government could produce to support the charge.

9 Listen carefully to her as I'll have
10 questions for you on this subject when she finishes.

11 You may be seated at this time.

12 Ms. Kerin.

13 MS. KERIN: Thank you, Your Honor. Count 3
14 charges a violation of 18 USC 1001. False statements
15 to a government agent. To prove this case at trial,
16 the government would have to introduce evidence to
17 prove beyond a reasonable doubt that the defendant made
18 a false statement in a matter within the jurisdiction
19 of a federal agency. Two, that the defendant acted
20 willfully, that is deliberately, with knowledge that
21 the statement was untrue. And, finally, the government
22 would have to demonstrate that the statement was
23 material to the government's agency -- to the
24 government agency's activities or decision.

25 At trial the government would introduce both

1 documents and testimony that in or about January of
2 2003 the defendant knowingly and willfully made a false
3 and fraudulent representation of a material fact within
4 the -- in a matter within the jurisdiction of the Drug
5 Enforcement Administration, an agency within the
6 executive branch of the government of the United
7 States.

8 On defendant's DEA registration renewal DEA
9 Form 224a the defendant stated that he had never had a
10 state professional license or controlled substance
11 registration revoked, suspended, denied, restricted, or
12 placed on probation. However, the government would
13 introduce evidence that at the time that the defendant
14 made that statement it was false. Defendant knew that
15 his medical license had been placed in a probationary
16 status in March of 2000.

17 In addition, the government would introduce
18 testimony that the defendant's false statements
19 regarding his medical license was material to DEA's
20 decisions and activities to renew the defendant's
21 registration.

22 THE COURT: All right. Thank you, Ms. Kerin.
23 Mr. Moos? Mr. Moos, I'm looking at paragraph
24 24 of your petition to enter a plea of guilty. I want
25 to ask you some questions about that.

1 Sometime around January of 2003 here in
2 Portland did you knowingly and willfully make a false
3 or fraudulent statement or representation of a material
4 fact within the jurisdiction of the Drug Enforcement
5 Administration, which is an agency within the executive
6 branch of the government of the United States? Did you
7 do that?

8 THE DEFENDANT: Yes, I did.

9 THE COURT: And was that false representation
10 that you had never had a state professional license or
11 controlled substance registration revoked, suspended,
12 denied, restricted, or placed on probation, when, in
13 fact, you had been in a probationary status?

14 THE DEFENDANT: Yes. I was on probation.

15 THE COURT: Okay. Anything else you want to
16 cover, Counsel?

17 MS. KERIN: No. Thank you, Your Honor.

18 THE COURT: Okay. Mr. Sady, do you wish to
19 discuss anything with your client --

20 MR. SADY: May I have a moment, Your Honor?

21 THE COURT: -- before I ask him how he
22 pleads?

23 MR. SADY: Thank you.

24 We're ready to proceed, Your Honor.

25 THE COURT: All right. Let me ask your

1 client. Is there anything you would like to discuss
2 with your lawyer before I ask you how you plead to the
3 charge?

4 THE DEFENDANT: No. I'm satisfied with our
5 discussion.

6 THE COURT: As to Count 3 of the indictment,
7 how do you plead? Guilty or not guilty?

8 THE DEFENDANT: Guilty.

9 THE COURT: I find the defendant fully
10 competent and capable of entering an informed plea and
11 his plea of guilty is a knowing and voluntarily plea
12 and I will accept it.

13 Now, I will set sentencing for Monday,
14 February 28th, 2011, at 9:30. That's the 28th of
15 February, 9:30.

16 How does that time work for everyone?

17 MS. KERIN: Fine. Thank you, Your Honor.

18 THE COURT: Okay. Now, at this point there
19 is a request for release; is that correct, Mr. Sady?

20 MR. SADY: There is, Your Honor.

21 THE COURT: Okay. I have a report from
22 Ms. Kolby of the US Pretrial Services. It's dated
23 December 20th.

24 Do you have a copy of that, Mr. Sady?

25 MR. SADY: Yes, Your Honor.

1 THE COURT: Okay. Now, the recommendation,
2 and I've talked with Ms. Kolby, is that based on the
3 present situation Pretrial Services recommends that
4 defendant be released under a number of conditions.
5 They base that request on the fact that the defendant
6 will have served nearly all of the potential custody
7 time he is facing. He -- I understand that his parents
8 have indicated that he will and may reside with them at
9 their home in Grants Pass, Oregon, and they will
10 cooperate with the defendant's supervision.

11 So it appears that there is no reason not to
12 allow his release at this time under those conditions.

13 Have you looked at the conditions recommended
14 by Pretrial Services --

15 THE DEFENDANT: Yes, I just got done.

16 THE COURT: -- Mr. Sady?

17 MR. SADY: Oh. Yes, I have Your Honor.

18 THE COURT: Do you have any objections to any
19 of those conditions.

20 MR. SADY: No, Your Honor.

21 THE COURT: All right. Then it is -- I will
22 order that he be released under the special conditions
23 set forth in the letter of December 20th from
24 Ms. Kolby.

25 Ms. Kolby, would you prepare the order?

1 MS. KOLBY: Yes, Your Honor.

2 THE COURT: All right. Anything else you
3 need to know, Ms. Kolby?

4 MS. KOLBY: No, Your Honor. Thank you.

5 THE COURT: Well, there is the issue, I
6 think, of guidance and -- electronic guidance.

7 What's the government's position on that?

8 MS. KERIN: Your Honor, one -- of course
9 we're not opposing the release of Mr. Moos. However,
10 we believe that GPS or radio guidance monitoring on
11 Mr. Moos is appropriate, given the flight risk. There
12 have been two magistrates that have found that Mr. Moos
13 presents a flight risk.

14 While I understand he has served almost all
15 of the time under the guideline range, there's
16 significant information that the government is unaware
17 of that related to his time in UAE and in China that
18 may affect the Court's and the government's position at
19 sentencing. We are still concerned and believe that he
20 potentially poses a flight risk, and we ask that the
21 Court at least put electronic monitoring on the
22 defendant.

23 THE COURT: Ms. Kolby, what's the
24 recommendation of Pretrial Services on this subject?

25 MS. KOLBY: I don't believe that it's

1 warranted at this point. The location monitoring is
2 typically designed to address a risk of danger, not
3 necessarily nonappearance. We typically would
4 recommend it for someone who represents a risk of
5 danger so we may monitor curfew or monitor when they
6 may be out of their residence or if there's a certain
7 area or a person that we don't want them to be around.
8 The global positioning would help us to do that.

9 As far as nonappearance, all it would really
10 accomplish is letting us know sooner if he cuts off the
11 bracelet or something to that effect.

12 THE COURT: Given the circumstances, I'm not
13 going to impose a requirement of electronic monitoring
14 at this time. If it's determined that there's any
15 concern or question whatsoever, you may apply to the
16 Court for an additional condition at that time.

17 MS. KOLBY: Thank you, Your Honor.

18 THE COURT: Okay. Anything else that we need
19 to take care of? I want to -- this -- I think that's
20 it.

21 Mr. Sady?

22 MR. SADY: The last thing would be is if --
23 as the Court has heard, the United States Attorney's
24 Office is doing what it can to facilitate the release
25 regarding the Washington County matters. If the Court

1 could recommend to the marshals that they take any
2 actions to facilitate that process, it would be much
3 appreciated.

4 THE COURT: Well, based upon my decision that
5 he be released, I'm going to order that he be released
6 this afternoon.

7 He will, of course, be released to the
8 detainer from Washington County. I've made a decision
9 that he is not a flight risk and that he's not a danger
10 at this point, and I would just recommend that same
11 conclusion to Washington County. But that's their
12 decision.

13 MR. SADY: Thank you, Your Honor.

14 THE COURT: Okay. Anything else?

15 MS. KERIN: Thank you, Your Honor. No.

16 THE CLERK: Court is in recess.

17 (Hearing concluded: 2:29 p.m.)

18 C E R T I F I C A T E

19 I hereby certify that the foregoing is a true
20 and correct transcript from the stenographic record of
21 the proceedings in the foregoing matter.

22
23 /s/ Jill L. Erwin

24 Jill L. Erwin

Date: January 31st, 2011

25 Oregon CSR No. 98-0346